

1937

## c 186 Warehousemen's Lien Act

Ontario

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## CHAPTER 186.

## The Warehousemen's Lien Act.

Interpretation.

**1.** In this Act,—

"Warehouseman."

(a) "Warehouseman" shall mean a person lawfully engaged in the business of storing goods as bailee for hire;

"Goods."

(b) "Goods" shall include personal property of every description that may be deposited with a warehouseman as bailee;

"Charges."

(c) "Charges" shall have the meaning assigned to it in section 2. R.S.O. 1927, c. 169, s. 1.

Lien.

**2.—(1)** Subject to the provisions of section 3, every warehouseman shall have a lien on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his authority.

Amount of lien.

(2) The lien shall be for the amount of the warehouseman's charges, that is to say,—

(a) all lawful charges for storage and preservation of the goods; and

(b) all lawful claims for money advanced, interest, insurance, transportation, labour, weighing, cooperage, and other expenses in relation to the goods; and

(c) all reasonable charges for any notice required to be given under the provisions of this Act, and for notice and advertisement of sale, and for sale of the goods where default is made in satisfying the warehouseman's lien. R.S.O. 1927, c. 169, s. 2.

Notice of lien when goods in hands of agent, etc.

**3.—(1)** Where the goods on which a lien exists were deposited not by the owner or by his authority, but by a person entrusted by the owner or by his authority with the possession of the goods, the warehouseman shall, within two months after the date of the deposit, give notice of the lien,—

(a) to the owner of the goods, including the person in whom the right of property therein is vested where a valid receipt note, hire receipt or other instrument evidencing a bailment or conditional sale of the goods is registered (or filed) under *The Conditional Sales Act* at the date of deposit; and Rev. Stat. c. 182.

(b) to the grantee of the goods under any bill of sale or chattel mortgage registered (or filed) under *The Bills of Sale and Chattel Mortgage Act* at that date. Rev. Stat. c. 181.

(2) The notice shall be in writing and contain,— Form of notice.

(a) a brief description of the goods; and

(b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and

(c) a statement that a lien is claimed by the warehouseman in respect of the goods under this Act.

(3) Where the warehouseman fails to give the notice required by this section, his lien, as against the person to whom he has failed to give notice, shall be void as from the expiration of the period of two months from the date of the deposit of the goods. Failure to give notice. R.S.O. 1927, c. 169, s. 3.

4.—(1) In addition to all other remedies provided by law for the enforcement of liens or for the recovery of warehouseman's charges, a warehouseman may sell by public auction, in the manner provided in this section, any goods upon which he has a lien for charges which have become due. Sale by public auction.

(2) The warehouseman shall give written notice of his intention to sell,— Notice of sale.

(a) to the person liable as debtor for the charges for which the lien exists; and

(b) to the owner of the goods, including the person in whom the right of property therein is vested, where a valid receipt note, hire receipt or other instrument evidencing a bailment or conditional sale of the goods is registered (or filed) under *The Conditional Sales Act* at the date of deposit of the goods; and Rev. Stat. c. 182.

(c) to the grantee of the goods under any bill of sale or chattel mortgage registered (or filed) under *The Bills of Sale and Chattel Mortgage Act* at that date; and Rev. Stat. c. 181.

(d) to any other person known by the warehouseman to have or claim an interest in the goods.

Form of notice.

(3) The notice shall contain,—

- (a) a brief description of the goods; and
- (b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and
- (c) an itemized statement of the warehouseman's charges showing the sum due at the time of the notice; and
- (d) a demand that the amount of the charges as stated in the notice and such further charges as may accrue shall be paid on or before a day mentioned, not less than twenty-one days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination according to the due course of mail if it is sent by mail; and
- (e) a statement that unless the charges are paid within the time mentioned the goods will be advertised for sale and sold by public auction at a time and place specified in the notice.

Advertisement of sale.

(4) Where the charges are not paid on or before the day mentioned in the notice, an advertisement of the sale, describing the goods to be sold, and stating the name of the person liable as debtor for the charges for which the lien exists, and the time and place of the sale, shall be published at least once a week for two consecutive weeks in a newspaper published in the Province and circulating in the locality where the sale is to be held, and the sale shall be held not less than fourteen days from the date of the first publication of the advertisement. R.S.O. 1927, c. 169, s. 4.

Substantial compliance with requirements.

5. Where a notice of lien under the provisions of section 3, or a notice of intention to sell under the provisions of section 4 has been given, but such provisions have not been strictly complied with, if the court or a judge before whom any question respecting the notice is tried or inquired into considers that such provisions have been substantially complied with, or that it would be inequitable that the lien or sale shall be void by reason of such non-compliance, no objection to the sufficiency of the notice shall in any such case be allowed to prevail so as to release or discharge the goods from the lien or vitiate the sale. R.S.O. 1927, c. 169, s. 5.

Application of proceeds of sale.

6.—(1) From the proceeds of the sale the warehouseman shall satisfy his lien, and shall pay over the surplus, if any, to

the person entitled thereto, and the warehouseman shall when paying over the surplus deliver to the person to whom he pays it a statement of account showing how the amount has been computed.

(2) If the surplus is not demanded by the person entitled thereto within ten days after the sale, or if there are different claimants or the rights thereto are uncertain, the warehouseman shall pay the surplus into the Supreme Court upon the order of a judge, and the order may be made *ex parte* upon such terms and conditions as to costs and otherwise as the judge may direct, and may provide to what fund or name the amount shall be credited.

When surplus to be paid into Court.

(3) The warehouseman at the time of paying the amount into Court shall file in Court a copy of the statement of account showing how the amount has been computed. R.S.O. 1927, c. 169, s. 6.

Statement of account to be filed.

7.—(1) At any time before the goods are sold any person claiming an interest or right of possession in the goods may pay the warehouseman the amount necessary to satisfy his lien, including the expenses incurred in serving notices and advertisement and preparing for the sale up to the time of the payment.

Discharge of lien.

(2) The warehouseman shall deliver the goods to the person making the payment if he is the person entitled to the possession of the goods on payment of the warehouseman's charges thereon, otherwise the warehouseman shall retain possession of the goods according to the terms of the contract of deposit. R.S.O. 1927, c. 169, s. 7.

Disposition of goods.

8. Where by this Act any notice in writing is required to be given, the notice shall be given by delivering it to the person to whom it is to be given, or by mailing it in the post office, postage paid and registered, addressed to him at his last known address. R.S.O. 1927, c. 169, s. 8.

Notices,—how given.

9. Nothing in this Act contained shall be deemed to affect the terms of the contract between the owner or bailor and the warehouseman and a warehouse receipt referring to this section and issued by a warehouseman, when delivered to the owner or bailor of the goods or mailed to him at his address last known to the warehouseman, shall constitute the contract between the owner or bailor and the warehouseman; provided that the owner or bailor may within twenty days after such delivery or mailing notify the warehouseman in writing that he does not accept such contract and thereupon he shall remove the goods deposited subject to the warehouseman's lien for charges and if such notice is not given then the said warehouse receipt so delivered or mailed shall constitute the contract. R.S.O. 1927, c. 169, s. 9.

Contract not affected

Proviso.